

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
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~~45 FREMONT STREET, 21ST FLOOR~~
~~SAN FRANCISCO, CALIFORNIA 94105~~

RH-01-016450

CALIFORNIA CODE OF REGULATIONS, TITLE 10.
CHAPTER 5, SUBCHAPTER 1

ADOPT Article 4.5 ~~ARTICLE X~~ TO READ:

~~ARTICLE X~~ Article 4.5 *PROCEDURES GOVERNING PERSONS SUBJECT TO
TITLE 18 UNITED STATES CODE SECTION 1033 and 1034*

SECTION 2175 PROCEDURES GOVERNING PROHIBITED PERSONS

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SECTION 2175 PROCEDURES GOVERNING PROHIBITED PERSONS

Section 2175.1 Purpose

The purpose of these regulations is to implement the provisions of Title 18 United States Code sections 1033 and 1034 “(the Act)”, as well as California Insurance Code sections 1723 and 1742.2.

NOTE: Authority cited: SEC. 3 and 5 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033 and 1034.

Penalties

Section 2175.2 Definitions

For the purpose of these regulations, the following definitions shall apply:

- (a) “Application” shall mean any filing made with the California Department of Insurance (Department) for written consent to engage in the business of insurance.*
- (b) “Applicant” shall mean any person subject to the provisions of Title 18 United States Code 1033 and 1034, who files an application for written consent to engage in the business of insurance.*

~~(b)(c)~~ “Breach of Trust” refers to certain crimes or offenses, including, but not limited to, any offense constituting or involving misuse, misapplication or misappropriation of (1) anything of value held as a fiduciary (including, but not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant) or (2) anything of value of any public, private or charitable ~~organization~~ entity.

(d) *“Burden of Proof” means the necessity or duty of proving a fact or facts that are in dispute on an issue raised at a hearing on a Request for Written Consent.*

~~(c)~~(e) *“Business of Insurance” means: (1) the writing of insurance, or (2) the reinsuring of risks, by an insurer, including all acts necessary or incidental to such writing or reinsurance and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.*

~~(d)~~(f) *“Dishonesty” refers to a crime or offense which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations and the failure to disclose material facts.*

(g) *“Felony” means*

- (1) *Any Federal crime for which the maximum authorized punishment exceeds one year of imprisonment;*
- (2) *Any crime for which the maximum authorized punishment exceeds one year incarceration; or*
- (3) *Any crime in any other state, commonwealth, territory or possession that is identified as a felony in that state, commonwealth, territory or possession, or if not identified as a felony in said other jurisdiction, any offense for which the maximum authorized punishment exceeds one year incarceration.*

~~(e)~~(h) *“Insurer” means any entity that transacts the business of insurance or that reinsures risks, and includes any person who acts as, or is, an officer, director, agent or employee of that business.*

~~(f)~~(i) *“Interstate Commerce,” means the following:*

- (1) *Commerce within the District of Columbia, or any territory, or possession of the United States;*
- (2) *All commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;*
- (3) *All commerce between points within the same State through any place outside such State via the Internet or any other means to receive commerce; or*
- (4) *All other commerce over which the United States has Jurisdiction.*

~~(g)~~(j) *“License” means any license, registration, certificate of authority or other permit or approval issued or granted by the Commissioner of Insurance*

- (k) "Licensee" means any person or entity holding a license.
- (l) "Prohibited Person" means any ~~and all~~ persons who ~~have~~ been convicted of felony crimes of dishonesty, breach of trust in a state or federal jurisdiction or who has been convicted of any violation of 18 U.S.C. §1033 and 1034 (the "Act"), who wishes to engage in or transact the business of insurance in this State, or who wishes to engage in or transact the business of insurance for insurers, and/or reinsurers and/or their agents and employees who are domiciled in this State. A "Prohibited Person" may be an employee of an insurance agency or an insurance company, an agent, solicitor, broker, consultant, third-party administrator, managing general agent, or subcontractor representing an insurance agency or insurance company who engages in or transacts the business of insurance.
- ~~(j)(m)~~ "Request for Consent" means a completed application, submitted by a Prohibited Person ~~that, which~~ requests the Commissioner's express, written consent ~~to, which will~~ allow that Prohibited Person to engage in or transact, or to continue to engage in or transact, the business of Insurance.
- ~~(j)(n)~~ "State" for the purposes of this regulation, includes any State in the United States the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

NOTE: Authority cited: SEC. 3 and 5 of Senate Bill 941, Chapter 782, Statutes of 1999.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2175.3 Who Must Comply

Any and all Prohibited Persons who are currently transacting, or engaging in, the business of insurance, or who intend to transact, or engage in, the business of insurance, must submit a completed Request for Consent to the California Department of Insurance (Department).

Section 2175.4 Prohibited Persons Currently Engaged in or Transacting the Business of Insurance

- (a) There are no provisions in the Act or these regulations that exempt or except any Prohibited Person, who is currently engaging in, or transacting, the business of insurance from compliance with the Act and these regulations. The Act and these regulations expressly apply to all persons currently licensed who have been convicted of any criminal felony involving dishonesty, breach of trust or any violation of the Act.

- (b) *Any and all currently licensed individuals who are subject to the Act and who were granted a license by the Department following full and complete disclosure of their criminal history shall be deemed to have the Insurance Commissioner's temporary consent to engage in or transact the business of insurance within the scope of their license authority.*
- (c) *Any temporary consent shall terminate upon expiration of the license term that is in effect on the effective date of these regulations. If the ~~p~~Prohibited ~~p~~Person holds more than one license issued by the Insurance Commissioner, then the temporary consent shall terminate upon the expiration of the license that first expires. On or before termination of the temporary consent, Prohibited Persons must submit a written Request for Consent to the Commissioner, and obtain the express, written consent of the Commissioner to engage in, or to continue to engage in, and/or to transact, or to continue to transact, the business of insurance in this State.*
- (d) *Any and all Prohibited Persons engaging in, or transacting, the business of insurance, without the express Written Consent of the Commissioner, are in violation of the Act and risk federal criminal sanctions.*

NOTE: Authority cited: SEC. 3 and 5 of Senate Bill 941, Chapter 782, Statutes of 1999.
Reference: 1723 and 1742.2 of the California Insurance Code and 18 U.S.C §1033.

Section 2175.5. Responsibility of Insurers and Other Employers to Identify Prohibited Persons

- (a) *It is the responsibility of insurers and of any other employer engaging in, or transacting the business of insurance to make a diligent effort to identify Prohibited Persons and to ensure that Prohibited Persons are not engaging in, or transacting, the business of insurance in violation of the Act and of these regulations. Insurers and other employers must actively seek to determine whether or not Prohibited Persons are in their employ and are engaging in or transacting the business of insurance.*
- (b) *The existence of a ~~an~~existingvalid license for a Prohibited Person does not waive, excuse, except or exempt an insurer or other employer from its responsibility to actively determine whether or not Prohibited Persons are in their employ nor the insurer's or other employer's ultimate responsibility for compliance with the provisions of the Act and these regulations.*

NOTE: Authority cited: SEC. 5 of Senate Bill 941, Chapter 782, Statutes of 1999.
Reference: 1742.2 of the California Insurance Code.

Section 2175.6. Applications ~~for~~ Written Consent ~~Written Consent to Transact the~~

Business

*The **p**rohibited **p**erson must file an Application for Written Consent with the Department as set forth herein.*

- (a) Prohibited Persons who are Officers, directors and employees of California domestic insurance and reinsurance companies, resident licensees and their employees, and other persons who perform substantial insurance-related activities for a domestic insurance or reinsurance company or a resident licensee must submit an Application for Written Consent (Form #LIC 48, Rev. 07/2001) to the Department.*
- (b) It is the responsibility of the applicant to read the Application in its entirety. Every question must be answered completely and truthfully.*
- (c) Failure to submit a complete Application may result in delay or denial of the Commissioner's Written Consent. The purpose of the Application is to provide the Prohibited Person with an opportunity to demonstrate that, notwithstanding the provisions of the Act, the Prohibited Person is fit to transact, or to engage in, the business of insurance without risk to consumers or insurers.*
- (d) The burden is upon the Prohibited Person to establish that the Commissioner's Written Consent should be granted.*
- (e) All Applications submitted to the Department must be typewritten; otherwise it will be returned to the Applicant.*
- (f) All Applications submitted must be complete, and are incomplete without the following:*
 - ~~1~~(1) A credit report that has been prepared within thirty days of the date that the Application for Written Consent is submitted to the Department. The credit report must be obtained from a recognized Credit Bureau.*
 - ~~2~~(2) Fingerprint impressions on Form #FD-258, including a check in the amount of \$74.00 made payable to "Sylvan/Identix Fingerprinting Centers."*
 - ~~3~~(3) An application processing fee in the amount of \$124.00.*
 - ~~4~~(4) Two 2" by 2", **black and white** recent passport photographs attached to the upper right hand corner of the first page of the application for written consent.*

~~5.(5)~~ Certified copies of all court documents setting forth the initial conviction and any subsequent disposition, together with any other relevant documents or information that the Prohibited Person would like to have considered. All such documents must be submitted within 30 days of the Department's receipt of the application.

- (6) Any amendment to the application must be filed immediately upon the occurrence of any event that would change any answer on the application. Failure to file a timely amendment may result in denial of the Request for Written Consent or the immediate withdrawal of previously granted consent.

NOTE: Authority cited: SEC. 3 and 4 of Senate Bill 941, Chapter 782, Statutes of 1999.
Reference: 1723, 1727, and 1742.2 of the California Insurance Code.

**Section 2175.7. ~~Factors for Consideration of Applications for Written Consent~~
~~Written Consent to Transact the Business of Insurance~~**

- (a) The Insurance Commissioner shall have the sole discretion to grant or deny any Application for Written Consent to engage in or transact the business of insurance.
- (b) Factors to be considered in granting or denying an Application for Written Consent will include, but are not limited to:

~~1.(1)~~ The nature and severity of the crime.

~~2.(2)~~ The length of time since the conviction.

~~3.(3)~~ The injury and/or loss caused by the ~~p~~Prohibited ~~p~~Person.

~~4.(4)~~ Whether the conviction is related to the business of insurance.

(5) Whether the ~~p~~Prohibited ~~p~~Person received a pardon from the sovereign that convicted him.

(6) Whether the ~~p~~Prohibited ~~p~~Person completed parole or probation.

(7) Whether a breach of trust, dishonesty or a violation of the Act was involved.

(8) The nature and strength of character reference letters.

(9) The person's business and personal record before and after the conviction.

(10) Whether and to what extent the person has made material false statements in an application, renewal or in other documents filed with the Commissioner.

(11) Whether and to what extent the person has made material false statements in applications or other documents filed with other State or federal agencies.

(12) ~~Whether the Prohibited Person's~~ conviction was ~~expunged~~.

(13) ~~Whether or not the conviction was received in a foreign country.~~

NOTE: Authority cited: SEC. 2 and 3 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1629 (a) through (d), 1723 (a) and (b) and 1742.2 of the California Insurance Code.

Section 2175.8 Written ~~Consent~~ Consent as a Prerequisite for Licensing

- (a) Prohibited Persons are required to obtain the express, written consent of the Commissioner before any license application shall be considered.*
- (b) Current licensees must have the Commissioner's express Written Consent pursuant to the Act and these regulations prior to engaging in, or transacting, the business of insurance.*
- (c) No Prohibited Person shall be granted a license, shall be permitted to retain a license or shall engage in, or transact, the business of insurance if their Request for Written Consent has been denied.*

NOTE: Authority cited: SEC. 3 and 4 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1723, 1727, and 1742.2 of the California Insurance Code.

Section 2175.9. Standard Form of Application for Requesting Written Consent

- (a) The Department has developed a standardized form of Application (Form # LIC 48, Rev. 07/2001) for the use of Prohibited Persons seeking the Commissioner's Written Consent pursuant to the Act and these regulations. The Prohibited Person seeking Written Consent must sign the Application form. The Prohibited Person must state on the Application form that the information contained therein is truthful and complete and that the Application form has been signed pursuant to all relevant criminal and administrative penalties, including, but not limited to, penalty of perjury under the laws of the State of California.*
- (b) The Commissioner may request additional information at any time from an Applicant to support a pending Application for Written Consent. The Applicant is required to support a pending Application by promptly providing any ~~requested~~ such information. Failure to provide such information may result in the Commissioner's denial of the Application.*
- (c) If consent is denied, the Applicant will be notified in writing of the basis for that denial. The Notice of Denial will provide the Applicant ~~with a denial statement~~ as well as ~~a time line~~ and instruction ~~for any appeal of the denial the option to withdraw the application or to proceed to a hearing.~~*

NOTE: Authority cited: SEC. 2, 3, 4, and 5 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1669, 1723, 1727 and 1742.2 of the California Insurance Code.

Section 2175.10. Requirements for Character References

Character references may be submitted to the Department for the Commissioner's consideration. Character references shall state how long and in what capacity the person making the reference has known the applicant. References shall also expressly state that the person providing the reference is aware that the reference is being provided in connection with a Request for Written Consent to engage in or transact the business of insurance despite the existence of a relevant felony criminal conviction.

NOTE: Authority cited: SEC. 2, 3 and 5 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1723, 1727 and 1742.2 of the California Insurance Code.

SECTION 2176 DENIAL, EXPIRATION OR TERMINATION OF WRITTEN CONSENT

Section 2176.1. Effect of False or Misleading Statements

- (a) Any Written Consent granted by the Commissioner shall be conditioned upon the truth and veracity of the documents and information submitted by or on behalf of the Prohibited Person making the Request for Written Consent. In the event that the Department determines that the Prohibited Person receiving the Written Consent, or their representative, has made materially false or misleading statements, or has failed to disclose material information, the Written Consent shall be void ab initio.*
- (b) If the Department determines that a Prohibited Person has violated the terms of a Written Consent ~~in any way~~, the consent shall terminate immediately.*
- (c) Providing false information to the Department for any purpose constitutes a violation of the Act and is grounds for immediate, summary revocation of ~~any~~ any license issued by the Department.*

Section 2176.2 Written Consent Effective for Specified Positions and Responsibilities Only

- (a) Any Written ~~Consent requests~~ issued by the Commissioner shall be for ~~job responsibility specific and conditioned upon~~ the Prohibited Person remaining in the same or similar job position with the same responsibilities as attested to in the initial Request for Written Consent. A change in job responsibilities requires the Prohibited Person to file ~~a new or~~ an amended Request for Written Consent.*

- (b) *If the Prohibited Person receiving the Written Consent has been given significantly increased job responsibilities and has not so informed the Department the initial Written Consent shall terminate immediately.*

Section 2176.3 Temporary Written Consent

- (a) *The Commissioner has the discretion to grant a temporary Written Consent that will expire at a time certain.*
- (b) *Upon the expiration of a temporary Written Consent, the Prohibited Person is in violation of the Act if the Prohibited Person is engaging in or transacting the business of insurance without first receiving a new, express, Written Consent from the Commissioner.*

NOTE: Authority cited: SEC. 1, 2, and 5 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1065.3, 1669 and 1742.2 of the California Insurance Code.

Section 2176.4 Subsequent Convictions of Prohibited Persons Previously Granted Written Consent

Any Prohibited Person given a Written Consent to participate in the business of insurance shall immediately notify the Department if the Prohibited Person is subsequently convicted of an offense under 18 U.S.C. §1033, or any felony offense involving dishonesty or breach of trust making them once again subject to the provisions of 18 U.S.C. §1033 and these regulations. The consent previously issued is terminated automatically upon conviction for the subsequent offense. The Prohibited Person shall be informed in writing, via certified mail, return receipt requested, that the consent previously issued has been withdrawn and that engaging in the business of insurance again violates the Act.

NOTE: Authority cited: SEC. 1, 2, and 5 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1065.3, 1669 and 1742.2 of the California Insurance Code.

SECTION 2177 HEARINGS PROCEDURE

~~Administrative law judges appointed by the Commissioner shall provide over all hearings conducted by the CDI pursuant to Requests for Consent by Prohibited Persons. The hearings shall be conducted in accordance with the Administrative Procedures Act. Per Andrea's comments: This section needs to include when a hearing is available, how to ask for a hearing, timeline for hearings, filing requirements, CDI's response, subpoena's - as per the Administrative Procedure Act, Chapter 4.5. Andrea suggested that she and Natasha Ray work on this section of the regulation.~~

~~NOTE: Authority cited: SEC. 1, 5 and 6 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1065.3, 1738 and 1742.2 of the California Insurance Code.~~

Section 2177.1 Time Limit in Which to Request a Hearing

~~Applicants~~ who have received a Notice of Denial of Consent may request a hearing, in writing, within sixty (60) calendar days after the issue date of the Notice.

Section 2177.2 Form of Request for Hearing and Information Required

A Request for Hearing shall be in writing and must include:

- (a) The name, address, telephone number, and fax number of the Prohibited Person;
- (b) The name, address, telephone number, and fax number of the Prohibited Person's representative, if any;
- (c) A statement explaining why the Prohibited Person should not be denied the Commissioner's Written Consent;
- (d) A copy of the Commissioner's Denial of Consent;
- (e) Copies of any additional documents that were not included in the Prohibited Person's initial Application, which support the Prohibited Person's explanatory statement and upon which the Prohibited Person intends to rely at the hearing.

Section 2177.3 Filing and Service Requirements

- (a) An original and one copy of the Request for Hearing and all documents provided must be sent to the California Department of Insurance, Administrative Hearing Bureau, 45 Fremont Street, San Francisco, California 94105.
- (b) All required documents and copies must be delivered to the Administrative Hearing Bureau either by personal delivery or U.S. Postal Service Return Receipt Requested delivery.

Section 2177.4 Time of Hearing

The Chief Administrative Law Judge of the Administrative Hearing Bureau shall assign the case to an Administrative Law Judge for hearing. An administrative law judge shall hold a hearing within sixty (60) days of the Administrative Hearing Bureau's receipt of the Department's response to the Request for Hearing. The hearing may be held on a later date upon agreement of both parties. The Administrative Law Judge shall give the parties not less than 10 days written notice of the date on which a hearing is scheduled.

Section 2177.5 Continuances; Good Cause

- (a) A continuance for any act occurring under this article may be granted by the Chief Administrative Law Judge or the Administrative Law Judge for good cause shown.
- (b) When seeking a continuance, a party shall apply for the continuance within five (5) business days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the five (5) business days have lapsed, if the party seeking the continuance is not responsible for, or has made a good faith effort to prevent, the condition or event establishing the good cause.

Section 2177.6 Role of Department of Insurance

The Department of Insurance is a party in the hearing, representing the Commissioner. The Administrative Hearing Bureau shall notify the Department within 20 days of its receipt of any complete and appropriately filed, Request for Hearing. The Department shall file an original and one copy of its response to the underlying issues raised by the Prohibited Person in the Request as well as an original and one copy of any documents upon which it plans to rely at the hearing. Copies of the Department's response and any documents filed with the Administrative Hearing Bureau shall also be served on the Prohibited Person and/or their representative, if any.

Section 2177.7 Representation of Prohibited Person at the Hearing

A Prohibited Person may be represented in the proceedings before the Administrative Hearing Bureau. A representative is not required and the representative need not be an attorney.

Section 2177.8 Administrative Law Judge's Authority

- (a) Article 12 of Chapter 4.5 of the Administrative Procedure Act (commencing with Government Code section 11455.10), is adopted, and is applicable to these

proceedings. The Administrative Law Judge may exercise all the authority granted pursuant to Chapter 4.5 of the Administrative Procedure Act.

- (b) The Administrative Law Judge may take any other action necessary or appropriate to the discharge of his or her duties, consistent with the statutory or other authority under which the Commissioner functions. The Administrative Law Judge may issue such orders compelling the compliance of the parties and other persons subject to the jurisdiction of the Commissioner as necessary to the discharge of his or her official duties and the efficient use of the Department's judicial time and resources.
- (c) The Chief Administrative Law Judge shall exercise all authority set forth in this section until a proceeding is assigned to an Administrative Law Judge.

Section 2177.9. Burden of Proof

The burden of proof at a hearing on a Request for Written Consent is on the Prohibited Person seeking the Commissioner's Written Consent to engage in or transact the business of insurance in this State.

NOTE: Authority cited: SEC. 3, 4, and 5 of Senate Bill 941, Chapter 782, Statutes of 1999. Reference: 1723, 1727 and 1742.2 of the California Insurance Code.

Section 2177.10 Evidence

- (a) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions.
- (b) The rules of privilege shall be effective to the extent that they are otherwise required by law to be recognized at the hearing.
- (c) The Administrative Law Judge has the sole discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (d) No documentary evidence will be admitted into evidence at the hearing that was not previously exchanged between the parties without good cause shown why the evidence was not available to the parties for exchange prior to the hearing.

Section 2177.11. Additional Evidence or Briefing

~~(a) The Administrative Law Judge may require the production of further evidence or briefing on any issue. If the administrative law judge determines that specific evidence or briefing is necessary as a part of the record, he or she shall set a deadline for the parties to file the requested evidence or briefing.~~

~~(b) Unless ordered by the Administrative Law Judge, or upon written motion for good cause shown, no additional evidence shall be introduced after the close of the evidentiary hearing.~~

~~Section 2177.12~~ Official Notice

~~In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state. All parties shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Pursuant to a written request, all parties shall be given a reasonable opportunity to refute the officially noticed matters, either by evidence or by written or oral presentation to the Administrative Law Judge.~~

~~Section 2177.13~~ Hearing Reporter

~~The proceedings at the hearing shall be reported by a hearing reporter. However, upon the consent and agreement of all parties, the proceedings may be reported electronically. Parties must make their own arrangements for payment with the hearing reporter if they wish to obtain a copy of the reporter's transcript.~~

~~SECTION XXXX. Costs~~

~~The prohibited person will pay all costs associated with this proceeding, including but not limited to, the court reporter for the Departmental hearings and/or meetings concerning his application. [Per Andrea's comments: Possible deletion of this section if authority is not stated in SB 941.]~~

Section 2717.14 Costs

All parties shall bear their own costs.

NOTE: Authority cited: SEC. 3, 4, and 5 of Senate Bill 941, Chapter 782, Statutes of 1999.
Reference
#98418 v2